

### **REMARKS/ARGUMENTS**

This Amendment addresses the issues raised in the Final Rejection of July 25, 2008 and accompanies a Request for Continued Examination as well as an Information Disclosure Statement.

It is counsel's understanding that in the Official Action of July 25, 2008 that two rejections remain. The first relates to method of treatment claims 25-27 in which enablement is questioned for these methods and the second is a provisional obviousness-type double patenting rejection (ODP) involving all pending claims, that is claims 15-27 over three pending, commonly assigned U.S. patent applications. The other OPD rejections, enablement questions and prior art issues were resolved by the Amendment of April 14, 2008 as stated in the Official Action of October 13, 2007.

It is counsel's further understanding that although all claims are listed in the Office Action Summary as rejected only claims 25-27 are rejected on the basis of enablement but that all claims, that is claims 15-27, are still of concern with respect to provisional obviousness-type double patenting.

Claims 15-24, according to counsel's understanding, are in proper order, enabled and free of the prior art and thus the only issue relevant to these claims is the provisional obviousness-type double patenting rejection. If these understandings are not correct, the examiner is encouraged to contact the undersigned for purposes of clarification and possible further action on applicant's part.

Applicants will now focus on the rejection and provisional ODP rejection which are operative and pertain to the present application as it stands.

#### **Amendments to the Claims**

Claim 20 has been amended in order to remove the following compounds:

tert-butylester of 20S-[3-(7-camptothecinylidene-amino)-butyl]-carbamic acid,

20S-7-[3-(N-tert-butoxycarbonylamino)propoxyimino-methyl]-camptothecin,

and to add the following compound

benzyl ester of 20S-(4-{[3-(7-camptothecinylidene-amino)-propyl]-benzyloxycarbonyl-amino}-butyl)-carbamic acid

which corresponds to example no. 6, page 11.

Claim 22 has been amended in order to remove the following compounds:  
tert-butylester of 20RS-[3-(7-homocamptothecinylidene-amino)-butyl]-carbamic acid and  
20R,S-7-[3-(N-tert-butoxycarbonylamino)propoxyimino-methyl]-homocamptothecin;  
and to add the following compound:  
benzyl ester of 20S-(4-{[3-(7-homocamptothecinylidene-amino)-propyl]-  
benzyloxycarbonyl-amino}-butyl)-carbamic acid, which is the homocamptothecin-analogue of  
ST2729 disclosed in example no. 6.

The introduction of this analogue is enabled by the fact that it is known in the art that  
homo-camptothecins are expected to have the same pharmaceutical behavior of the  
corresponding camptothecins. Authority for this may be found in Lavergne et al, *J Med Chem*,  
1998, 5410, which was already mentioned in page 5, last paragraph of the specification.

Claim 27 (treating viral diseases) has been amended in order to clarify its meaning.

New claim 28 (treating specific types of cancers) has been added and basis can be found  
in page 6 last paragraph, and in the examples.

New claim 29 (treating non-microcytoma lung cancer or gastric cancer) has been added  
and its basis can be found in the examples of pages 13-17.

**Enablement 35 USC §112, Paragraph 1**

In the Final Rejection the examiner questions enablement for claims 25-27 and  
presumably this concern may extend to newly added claims 28 and 29 also directed to methods  
of treatment. The newly added claims find basis in the original description as explained above  
and are directed to specific types of cancers/tumors identified and discussed in the present  
application and the subject of various experimental examples.

In assessing enablement one must necessarily take into account the level of skill of a  
person in the relevant art and the information available to that person at or before the priority  
date of the present application. In order to assist the examiner in evaluating this, submitted  
herewith are copies of various papers available before the priority date that would have been  
readily available to a researcher in the relevant area and would form part of the documentation  
and information available to that person either directly or within easy access.

It is well known to the skilled person that camptothecins act as anticancer agents by inhibiting of Topoisomerase I. In this sense, a reference was made in the present application to European Patent N. EP1044977 as a review of camptothecin and their use as anticancer agents.

In addition, attached are the following papers:

*Garcia-Carbonero et al, Clin canc res, 2002; Li et al, PNAS, 1993, 1839; Dallavalle et al, Exp Opin Ther Pat, 2002, 837; Lesueur-Ginot et al, Cancer Res., 1999, 2939, Vladu et al, Mol Pharm, 2000, 243; Dallavalle et al, J Med Chem, 2001, 3264; Kantarjian et al, Blood 1993, 1146; Kaufmann et al, Blood, 1994, 517; Lichtman et al, Cancer Control, 2000, 548;* these papers represent information available in the art and enable the description in the subject application related to the methods of claims 24, 25 and 28, since they show that the claimed compounds act on cancer through the inhibition of Topoisomerase I.

Claim 26 (combating parasites) is supported by the content of Bodley, PNAS, 1995, 3726.

Claim 27 (treating a virus disease) is supported by the content of Priel et al, J Virology, 1991, 4137.

Thus, the person with ordinary skills in the field of pharmacology would have sufficient information, taken from the present description and the above publications to practice methods of the present invention, in particular for treating cancer in general, parasites and virus diseases by administering the compounds of claim 15 as defined in the methods of claims 24-29.

For completion of the record submitted herewith is an Information Disclosure Statement identifying and listing the articles discussed above, copies of them are included with that Information Disclosure Statement. The examiner is requested to consider these documents for the purpose for which they are offered and indicate such consideration by the appropriate marking on the concurrently filed IDS.

In view of the above applicants submit that all the method of treatment claims overcome the rejections under 35 USC § 112, paragraph 1.

#### **Double Patenting**

With reference to the provisional ODP rejections based upon three co-pending applications 11/596016, 11/596015 and 11/596189, applicants request to hold this rejection in abeyance since the conflicting claims are still pending.

A synopsis of the status of the three pending applications is as follows:

Paragraph # from Official Action of November 13, 2007	Serial No.	Status	Art Unit	Examiner
#18	11/596,016	Active	AU 1625	Same examiner as in present case
#19	11/596,015	Waiting for action	AU 1614	Ardin Marschel
#20	11/596,189	Waiting for Action	AU 1614	Alicia Hughes

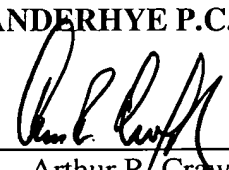
Once allowable subject matter is indicated in the present application, applicants will address the examiner's concerns in more detail but for the moment it seems premature to take action when not only this application but the three referenced applications are in a state of flux (not allowed).

Favorable consideration is requested. The examiner is encouraged to contact the undersigned if adjustments to the claims of this application are needed to place any of the claims in condition for allowance.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By: \_\_\_\_\_

  
Arthur R. Crawford  
Reg. No. 25,327

ARC:eaw  
901 North Glebe Road, 11th Floor  
Arlington, VA 22203-1808  
Telephone: (703) 816-4000  
Facsimile: (703) 816-4100